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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA,
Plaintiff;

CIVIL NO.

v.
MISSISSIPPI BAKERY,
a division of ALDI, INC.

Defendant.

3 04 CV 80102

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (EPA), is filing a Complaint concurrently with this Consent Decree, alleging that Mississippi Bakery, a division of Aldi, Inc., (Defendant), located in Burlington, Iowa, violated the Clean Air Act (CAA), 42 U.S.C. §§7401, *et seq.*

The Complaint, pursuant to 42 U.S.C. §7413(b), seeks injunctive relief and civil penalties for alleged violations of the refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§82.152 - 82.166, (Recycling and Emission Reduction), promulgated pursuant to 42 U.S.C. §§7671 - 7671q.

The United States and Defendant have agreed on terms to settle this action. By entering into this Consent Decree, Defendant makes no admission of liability with respect to violations of the CAA. The United States and Defendant have agreed that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this action.

IT IS ADJUDGED, ORDERED and DECREED THAT:

I. Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1345, and 1355 and 42 U.S.C. §7413(b).

2. Defendant does not contest the Court's jurisdiction over this action or over Defendant and does not contest venue in this judicial district.

3. Notice of the commencement of this action has been given to the Iowa Department of Natural Resources as required by 42 U.S.C. §7413(b).

II. Applicability

4. The obligations of this Consent Decree apply to and are binding on both the United States and on the Defendant, their assigns and successors.

5. Defendant must provide a copy of this Consent Decree to all officers, employees and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant may not raise as a defense the failure by any of their officers, directors, employees, agents or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

7. At least thirty (30) days prior to transferring ownership or operation of Defendant's Mississippi Bakery facility to any other person, Defendant must provide a copy of this Consent Decree to each prospective successor owner or operator. No transfer will relieve Defendant of its obligations to ensure that the terms of this Consent Decree are implemented, including but not

limited to, ensuring that each Appliance listed in paragraph 16 is replaced in accordance with section VI.

III. Defendant

8. The Defendant is, or at all times relevant to this matter was, the owner and operator of the Mississippi Bakery facility located in Burlington, Iowa. Mississippi Bakery is a division of Aldi, Inc.

9. The Defendant is a "person" as defined in 42 U.S.C. §7602(e) and within the meaning of 42 U.S.C. §7413(d).

IV. Civil Penalty

10. Defendant must pay to the United States a civil penalty in the amount of \$60,000 (sixty thousand dollars) in settlement of the claims alleged in the United States Complaint. Payment will be made pursuant to the provisions of ¶12 within twenty-one (21) days ("the due date") after the Effective Date of this Consent Decree. The Effective Date means the entry of this Consent Decree by the Court.

11. No portion of the civil penalty paid pursuant to this Consent Decree may be used to reduce Defendant's federal or state tax obligations.

12. The payment to the United States must be by Fed Wire Electronic Funds Transfer in accordance with instructions provided by the United States to Defendant upon entry of the Consent Decree. Copies of all documents accompanying the FedWire transfer and a transmittal letter referencing the Department of Justice case number, 90-5-2-1-08100, must simultaneously be mailed to the United States Attorney's Office and to:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

CFC Coordinator
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, KS 66101

13. Interest on any outstanding balance of principal will accrue at the statutory rate set forth in 28 U.S.C. §1961 from the due date through the date of full and complete payment.

V. Default

14. If Defendant does not timely pay in full the civil penalty required by Section IV, Defendant will be liable to the United States for any reasonable attorney's fees, whether suit be brought or not, and all other costs and expenses actually and reasonably incurred by the United States in connection with collecting the civil penalty.

15. This Consent Decree will be considered an enforceable judgment against Defendant for purposes of post judgment collection under Fed. R. Civil Pro., R.69, and other applicable statutory authority.

VI. Compliance Requirements

16. Consistent with the terms of this Consent Decree, Defendant agrees to replace the following industrial process refrigeration appliances (IPR) in the Mississippi Bakery facility by July 30, 2005: (1) ice water refrigeration unit, 103 lbs. R-22; (2) dough refrigeration unit, 308 lbs. R-22; and (3) Triumph Refrigeration unit, 135 lbs. R-22.

17. (a) Defendant shall replace the IPR's identified in ¶16 with refrigeration units that utilize non-ozone depleting refrigerant (non-ODS refrigerant). No IPR removed from the Mississippi Bakery facility may be reinstalled at another facility.

(b) Non-ozone depleting refrigerant means any refrigerant that is (i) approved by EPA for the end use of the appliance; and (ii) is not an ODS refrigerant.

(c) ODS refrigerant means a Class I or a Class II substance as defined in 40 C.F.R. §82.3, or a blend of Class I or Class II substances.

18. Defendant must at all times comply with the regulations set forth at 40 C.F.R. Part 82, Subpart F.

19. Where any compliance obligation required to be met under this Section requires a federal, state or local permit or approval, Defendant must submit timely and complete applications and take all other actions necessary to obtain all permits or approvals.

20. The time frame for compliance with this Section may be amended by the request of the Defendant at the discretion of the EPA. Defendant shall submit in writing to the EPA the reasons for the need for an amended time frame, before the time the compliance is due. EPA approval of a request to amend the time frame shall be based on good cause as shown by the Defendant and shall not be unreasonably withheld.

VII. Reporting

21. Defendant must submit quarterly progress reports to EPA every three months until the obligations under ¶¶ 16 and 17 have been satisfied, including the reporting period during which the Defendant completes the replacements pursuant to Section VI. These quarterly reports will be due on October 30, 2004, January 30, 2005, April 30, 2005, and July 30, 2005 and must be sent to the EPA at the address set out in ¶12. Each report must contain the following:

a. A description of the activities undertaken to comply with the requirements of ¶¶ 16 and 17; and

b. A list of appliances that Defendant has replaced in accordance with ¶¶16 and 17.

22. Each report or document required to be submitted pursuant to the terms of this Consent Decree must contain a certification signed by a responsible corporate officer of Defendant. The certification must read:

"I, _____, certify that under penalties of law that the information contained in or accompanying this submission/document is true, accurate and complete. As to the identified portions of this submission/document for which I cannot personally verify its/their truth and accuracy, I certify as the official with supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate and complete."

VIII. Stipulated Penalties

23. The Defendant must pay Stipulated Penalties in the amounts set forth below for each failure to comply with the requirements of the Consent Decree. "Compliance" includes payment of the civil penalty, together with any accrued interest, completion of the requirements under this Consent Decree, and within the specified time schedules established by and approved under this Consent Decree, as set forth in Section VI (Compliance Requirements). "Compliance" also includes timely reporting under Section VII of this Consent Decree.

24. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Sections IV (Civil Penalty) and VI (Compliance Requirements) of this Consent Decree.

<u>Period of Failure to Comply</u>	<u>Penalty per applicance or per day</u>
1 st through 30 th day	\$250.00
31 st through 60 th day	\$500.00
61 st day and beyond	\$1,000.00

25. For violations of Section VII (Reporting), Stipulated Penalties will accrue at a rate of \$100 per day for the first thirty (30) days and \$250 per day thereafter.

26. Stipulated penalties are due and payable when the United States makes a demand for payment. The United States, may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due under this Consent Decree.

27. Notwithstanding the date of any demand for Stipulated Penalties, all Stipulated Penalties will begin to accrue on the day after the performance is due or on the day the violation occurs, whichever is applicable. Stipulated penalties will continue to accrue until performance is completed or until the violation ceases. Nothing herein will prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

28. All stipulated penalties must be paid within thirty (30) days after the United States makes a demand for payment. Stipulated penalties due the United States must, as directed by the United States, be paid by EFT or by certified or cashier's check .

29. Defendant must pay interest on any balance of Stipulated Penalties not paid within the time provided in ¶28. Interest will be computed as provided by 28 U.S.C. §1961. If any Stipulated Penalty is not paid in full when due, the United States is entitled to recover the costs (including attorneys fees) incurred in any action necessary to collect any Stipulated Penalty or interest thereon.

IX. Information Collection and Retention

30. During the term of the Consent Decree, the United States and its representatives, including attorneys, contractors and consultants, will have the right of entry to the Mississippi Bakery facility at all reasonable times, upon presentation of credentials to:

a. Monitor the progress of all requirements under this Consent Decree;

b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. Assess Defendant's compliance with the Consent Decree.

31. Until the termination of this Consent Decree, the Defendant must retain, and must instruct its contractors and agents, to preserve copies of all records and documents (including documents in electronic form) in its or its contractors' or agents' possession or control that relate in any manner to the Defendant's performance of their obligations under this Consent Decree. This record retention will apply regardless of any corporate document retention policy to the contrary.

32. The United States shall have thirty (30) days following the termination of the Consent Decree to request documents subject to ¶31. After 30 days, Defendant may dispose of such records and documents in the normal course of business.

33. This Consent Decree in no way limits or affects any right of entry and inspection or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations or permits.

X. Compliance with CAA

34. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the Defendant's compliance with any aspect of this Consent Decree will result in compliance with the provisions of the CAA, namely 42 U.S.C. §§7671 - 7671q. Notwithstanding the United States' review and approval of any document submitted to it by Defendant pursuant to this Consent Decree, the Defendant will remain solely responsible for

compliance with the requirements of the CAA and terms of this Consent Decree.

XI. Effect of Settlement/Reservation of Rights

35. This Consent Decree resolves the claims of the United States for civil penalties for the violations alleged in the Complaint. Nothing in this Consent Decree is intended to operate in any way to resolve any other civil claims or any criminal liability of the Defendant.

36. Subject to ¶19, neither the Consent Decree nor any requirement hereunder is to be interpreted to be a permit or a modification of an existing permit issued pursuant to the CAA, 42 U.S.C. §7401, *et seq.* nor will it in any way relieve Defendant of their obligation to obtain a permit and comply with the requirements of any permit or with any other applicable Federal, State or local statutes and regulations.

37. This Consent Decree may not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, or under other federal or state laws, regulations or permit conditions, except as expressly specified herein.

38. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations and permits. Defendant's compliance with this Consent Decree is not a defense to any action commenced pursuant to said laws, regulations, or permits.

39. This Consent Decree does not limit or affect the rights of Defendants or the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided for by law.

40. This Consent Decree may not be construed to create rights in, or grant any cause of

action to, any third party not party to this Consent Decree.

41. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

XII. Costs

42. The Parties will each bear their own costs of litigation of this action, including attorneys' fees.

XIII. Retention of Jurisdiction

43. The Court will retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the parties to apply to the Court for such further order, direction or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XIV. Modification

44. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the parties. Where the modification constitutes a material change to any term of this Consent Decree, it will be effective only upon approval by the Court. The terms and schedules contained in Section VI (Compliance Requirements) may be modified upon written agreement of the parties without approval of the Court, unless any such modification effects a material change to the terms of this Consent Decree or materially affects Defendant's ability to meet the objectives of this Consent Decree.

XV. Termination

45. The Consent Decree will terminate on the date on which Defendant has satisfactorily completed its obligations under ¶¶ 10, 16, 17 and 21.

46. To terminate this Consent Decree, Defendant shall submit a certification to the United States, through the United States Attorney's Office, stating that Defendant has fully complied with the requirements of the Consent Decree. Within thirty (30) days of receiving such certification, the United States shall either: (a) file the certification with the Court, together with a notice that the United States does not object to the termination of the Consent Decree; or (b) notify the Defendant in writing that it does not agree that Defendant has complied with the requirements of the Consent Decree. If the United States objects to the termination of the Consent Decree, the parties will have 30 days from the date Defendant receives notice of the disagreement to resolve the disagreement. If within those thirty (30) days the parties cannot resolve the dispute, Defendant may petition the Court to resolve the disagreement and terminate the Consent Decree.

XVI. Public Participation

47. This Consent Decree will be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. §50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

XVII. Final Judgment

48. Upon approval and entry of this Consent Decree by the Court, this Consent Decree will constitute a final judgment of the claims settled herein.

IT IS SO ORDERED this _____ day of _____, 2004.

United States District Court Judge

FOR THE UNITED STATES OF AMERICA

**Matthew G. Whitaker
United States Attorney**

**By: _____
Maureen McGuire
Assistant United States Attorney
U. S. Courthouse Annex, 2nd Floor
110 E. Court Avenue
Des Moines, Iowa 50309**

9-2-04

Date

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY**

By:

James B. Gulliford
Regional Administrator

8/31/04
Date

By:

Martha R. Steincamp
Regional Counsel

8/30/04
Date

Region VII
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, KS 66101

FOR THE DEFENDANT

Mississippi Bakery

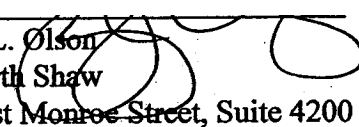
By: 

Name: Catherine D. Misko

Title: Vice President

Mississippi Bakery
834 Jefferson Street
Burlington, IA 52601

Date: 8/13/04


Jeryl L. Olson
Seyfarth Shaw
55 East Monroe Street, Suite 4200
Chicago, IL 60603-5803

8/17/04

Attorney for Defendant